

PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064  
TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

UNIT 5201, FORTUNE FINANCIAL CENTER  
5 DONGSANHUAN ZHONGLU  
CHAOYANG DISTRICT, BEIJING 100020, CHINA  
TELEPHONE (86-10) 5828-6300

SUITES 3601 - 3606 & 3610  
36/F, GLOUCESTER TOWER  
THE LANDMARK  
15 QUEEN'S ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, UNITED KINGDOM  
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2-CHOME  
CHIYODA-KU, TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE  
77 KING STREET WEST, SUITE 3100  
P.O. BOX 226  
TORONTO, ONTARIO M5K 1J3  
TELEPHONE (416) 504-0520

2001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200  
POST OFFICE BOX 32  
WILMINGTON, DE 19899-0032  
TELEPHONE (302) 655-4410

MATTHEW W. ABBOTT  
EDWARD T. ACKERMAN  
JACOB A. ADLERSTEIN  
JAMES A. ANDERSON  
ALLAN J. ARNSTADT  
JONATHAN H. ASHTOR  
ROBERT A. ATKINS  
SCOTT A. BARSHAY  
PAUL M. BASTA  
J. STEVEN BAUGHMAN  
LYNN M. BAZAR  
CRAIG A. BENSON  
MARK S. BERGMAN  
DAVID M. BERNICK  
JOSEPH J. BIAL  
BRUCE BIRENBOIM  
H. CHRISTOPHER BOEHNING  
BRIAN BOLD  
ANGELA BONVINO  
ROBERT BRITTON  
DAVID W. BROWN  
WALTER BROWN\*\*  
SUSANNA M. BUERGEL  
JESSICA S. CAREY  
DAVID CARMON  
GEOFFREY P. CHEPICA  
ELLEN N. CHING  
WILLIAM A. CLAREMAN  
LEWIS R. CLAYTON  
YAHONNES CLEARY  
RACHAEL G. COFFEY  
JAY COHEN  
KELLEN A. CORNISH  
CHRISTOPHER J. CUMMINGS  
THOMAS V. DE LA BASTIDE III  
MEREDITH DEARBORN\*\*  
ARIEL J. DECKELBAUM  
KAREN D. DAVIS  
ANDREW BELSIE EATON  
ANDREW J. EHRLICH  
GREGORY A. EZRING  
ROSS A. FIELDSTON  
ANDREW C. FINCH  
BRAD J. FINKELSTEIN  
BRIAN P. FINNEGAN  
RONALD FISCH  
PETER E. FISCH  
HARRIS FISCHMAN  
ANDREW J. FOLEY  
ANDREW J. FORMAN\*  
VICTORIA S. FORRESTER  
HANIS B. FREIDUS  
CHRISTOPHER P. FREY  
MANUEL P. FREY  
ANDREW L. GAINES  
KENNETH A. GALLO  
MICHAEL E. GERTZMAN  
ADAM M. GIVERTZ  
SAVATORE GOGLIORMELLA  
NICHOLAS GOODMAN  
MATTHEW B. GOLDSTEIN  
ROBERTO J. GONZALEZ\*  
CATHERINE L. GOODALL  
CHARLES H. GOODE, JR.  
ANDREW G. GORDON  
BRIAN S. GRIEVE  
ULRICH GRUN  
NICHOLAS GROOMBRIDGE  
BRUCE A. GUTENPLAN  
MELINDA HAAG\*  
ALAN S. HALPERIN  
CLAUDIA HAMMERMAN  
BRIAN S. HAMMERMAN  
MICHAEL HIRSHMAN  
JARRETT R. HOFFMAN  
ROBERT E. HOLO  
DAVID S. HUNTINGTON  
AMRAN HUSSEIN  
LORETTA A. IPPOLITO  
WILLIAM J. JACSON\*  
JAREN JANGHOBANI  
BRIAN M. JANSON  
JEH C. JOHNSON  
BRIAN S. KARP  
PATRICK N. KARNSITZ  
JOHN C. LENNEDY  
BRIAN KING  
KYLE J. KIMPLER

ALEXIA D. KORBERG  
ALAN W. KORNBERG  
DANIEL J. KRAMER  
CATHERINE KUSHNER  
DAVID D. LAKHDHIR  
GREGORY P. LAUFER  
BRIAN C. LAVIN  
XIAOYU GREG LIU  
RANDY LUSKEY\*\*  
LORETTA E. LYNCH  
JEFFREY D. MARCELL  
MARCO V. MASOTTI  
DAVID W. MAYO  
ELIZABETH R. MCCOLLM  
JEAN M. MCLOUGHLIN  
ALVARO M. MEMBRILLA  
MARK F. MENDELSON  
CLAUDETTE M. MINTZ-GOUJON  
WILLIAM B. MICHAEL  
JUDIE NG SHORTELL\*  
CATHERINE NYARADY  
JANE B. O'BRIEN  
ALEX YOUNG K. OH  
BRAD R. OKUN  
LINN AY B. PARKS  
ANDREW M. PARLEN  
DANIELLE C. PENHALL  
CHARLES J. PESANT  
JESSICA E. PHILLIPS\*  
VALERIE E. RADWANER  
JEFFREY J. RECHER  
LAWRENCE REICH  
LORIN L. REISNER  
JEANNIE S. RHEE\*  
WALTER G. RICCIARDI  
WALTER RIEMAN  
RICHARD A. ROSEN  
ANDREW M. ROSENBERG  
JOSHUA ROSENBERG  
JACQUELINE P. RUBIN  
CHARLES F. "RICK" RULE\*  
RAPHAEL M. RUSSO  
ELIZABETH M. SACKSTEDER  
JEFFREY D. SAFERSTEIN  
JEFFREY B. SAMUELS  
KRISTIN M. SCHNEIDER  
ROBERT B. SCHUMER  
JOHN M. SCOTT  
BRIAN SCRIVANI  
KYLE T. SEIFRIED  
KANNON K. SHANMUGAM\*  
CULLEN L. SINCLAIR  
AUDRA J. SOLWAY  
SCOTT M. SONTAG  
SARAH STASNÝ  
TARUN M. STEWART  
ERIN ALAN STONE  
AIDAN SYNNOTT  
BRETT TANNENBAUM  
RICHARD M. TARLOWE  
MONICA K. THURMOND  
DANIEL TOAL  
LAURA C. TURANO  
CONRAD VAN LOGGERENBERG  
KRISHNA VEERARAGHAVAN  
JEREMY M. VELASCO  
LIZ M. VELAZQUEZ  
MICHAEL VOGEL  
RAMY J. WAHBEH  
JOHN WEBER  
LAWRENCE G. WEE  
THEODORE V. WELLS, JR.  
LINDSEY L. WIERSMA  
STEPHEN J. WILLIAMS  
LAWRENCE I. WITTDORCHIC  
AUSTIN WITT  
MARK B. WLAZLO  
ADAM WOLLSTEIN  
JULIA TARVER MASON WOOD  
JENNIFER H. WU  
BETTY WAPNER  
JORDAN E. YARETT  
KAYE N. YOSHINO  
TONG YU  
TRACEY A. ZACCONE  
TAURIE M. ZEITZER  
T. ROBERT ZOCHOWSKI, JR.

\*NOT ADMITTED TO THE NEW YORK BAR  
\*\*ADMITTED ONLY TO THE CALIFORNIA BAR

March 12, 2020

### Via ECF

The Honorable Kimba M. Wood  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

*Elisa W. v. The City of New York, et al.*  
15 CV 5273 (KMW) (SLC)

Dear Judge Wood:

We write pursuant to Section III.A of Your Honor's Individual Rules on behalf of the Brooklyn Defender Services, The Bronx Defenders, Center for Family Representation Inc., and Neighborhood Defender Service of Harlem (the "proposed Parent Advocate *Amici*") to seek leave to file the attached *amicus curiae* brief in opposition to Plaintiffs' renewed motion for class certification. (Ex. A)

The proposed Parent Advocate *Amici* are four public interest organizations that, collectively, provide legal representation to, and protect the rights of, the vast

PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP

Judge Wood

2

majority of parents with children in foster care in New York City. This means that in Family Court cases across New York City where children have been removed from, and/or reunified with their families, proposed *Amici* represent the parents directly in those proceedings. (Ex. A at 1.) The Parent Advocates also regularly advocate for New York's families through various efforts to improve the foster system. (*Id.*) We respectfully submit, therefore, that proposed *Amici* have a unique perspective and valuable information to share here. Indeed, the Court previously allowed the Parent Advocates to intervene in this matter for the purpose of objecting to the proposed Consent Decree, and found that they offered a helpful perspective of stakeholders regarding the outcome of this case. *See Order denying Consent Decree*, ECF No. 259 at 16 ("The Court concludes that the objections to the Consent Decree by the Children's Advocates and the Parent Advocates are significant for purposes of this factor of the *Grinnell* analysis, as these organizations are well suited to advocate on behalf of many of those whose interests would be affected by the Consent Decree.").

District Courts have broad discretion to permit *amici curiae* in their cases. *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992). "An amicus brief should normally be allowed when ... the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Automobile Club N.Y. Inc. v. Port Authority of N.Y. & N.J.*, No. 11-cv-6746-RJH, 2011 U.S. Dist. LEXIS 135391 \*2 (S.D.N.Y. Nov. 22, 2011) (internal quotation marks omitted).

Based upon their extensive experience with the New York City foster system, the proposed Parent Advocate *Amici* submit this amicus brief to address what the Parent Advocates believe is an incomplete presentation of the foster system depicted in Plaintiffs' class certification motion. In this case, Plaintiffs seek to certify a class of children who are now or will be in foster care in New York. In particular, however, Plaintiffs propose certification of two subclasses consisting of (i) "all children who have been in ACS custody for more than two years and whose cases require special scrutiny pursuant to ACS policy," and (ii) "all children for whom Contract Agencies failed to assess and document compelling reasons every three months to justify the decision not to file a termination of parental rights petition after the children had been in care for 15 of the prior 22 months." Plaintiffs' proposed subclasses, as well as the substantive focus of their proposed class claims, expose a troubling focus on speed to adoption and termination of parental rights. This view is fundamentally in opposition to considered New York policy, which favors reunification of families even after lengthy separations, and appreciates that termination of parental rights should only occur in rare cases, as a last resort.

Indeed, consistent with social science research, New York adheres to a deliberate policy choice in favor of the reunification of children with their family of origin whenever reunification is achievable. In the Parent Advocates' experience, reunification can sometimes take years to achieve, as parents work to overcome obstacles presented by, for example, lack of affordable housing and other issues arising from poverty; mental health challenges; and the consequences of domestic violence. While

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Judge Wood

3

progress to speed the time to reunifications can be frustratingly slow, reunification of children with parents (or, sometimes, guardianship by relatives through kinship foster placement) nonetheless can and should remain the goal for most children.

The Parent Advocates are concerned that Plaintiffs' class certification motion ignores this important and well-considered policy choice to prioritize reunifying families. Instead, Plaintiffs conflate adoption with permanency, and focus repeatedly on duration of time in the foster system, the length of time before termination of parental rights (TPR) proceedings are commenced, and the purported need for paperwork to justify why TPR is not sought. Indeed, Plaintiffs' class certification motion refers to adoption *four times* as often as reunification, and mentions guardianship in passing only once, and the proposed subclasses seem geared to encourage policies favoring speedier TPRs and adoption. This focus, in proposed *Amici*'s view, threatens to undermine the substantial progress that New York has made (without any attendant increase in risk to children) in decreasing removals through preventative services, and prioritizing the reunification of families when removal does occur. The Parent Advocates are gravely concerned that the diversion of resources to *Plaintiffs'* preferred policy goals of speedier TPR and adoptions, rather than reunification of families, will undermine New York's considered policy goals, to the peril of New York's families and particularly the families of color that are disproportionately affected.

For these reasons, the Parent Advocates seek leave to file the enclosed amicus brief and supporting materials, to present the Court with additional context relevant to the pending motion, and to explain why Plaintiffs' apparent policy objectives (including as articulated through the proposed subclasses) are not in the best interests of New York's families.

We have consulted with the parties, and counsel for the City Defendant has informed us that the City Defendant consents to our filing. Counsel for the State Defendant takes no position on this request. Plaintiffs advised that they will communicate their position on the Parent Advocates' request for leave in a separate communication to the Court.

The Parent Advocates appreciate the Court's consideration of this request.

Respectfully submitted,

/s/ *Audra J. Soloway*

Audra J. Soloway

Copies to all counsel of record by ECF